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**FEDERAL COMMUNICATIONS COMMISSION**  
 Washington, D.C. 20554

JUN 13 1994

FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

In the Matter of )  
 )  
 Implementation of )  
 Commission's Equal )  
 Employment Opportunity Rules )

MM Docket No. 94-34

To: The Commission

**COMMENTS OF GREATER MEDIA, INC.**

Greater Media, Inc. (Greater Media), through its attorneys and pursuant to Section 1.415 of the rules, hereby files its comments in response to the Notice of Inquiry released on April 21, 1994 (FCC 94-103) (Notice) in the above-captioned proceeding respecting implementation of the Commission's Equal Employment Opportunity (EEO) Rules.

1. Greater Media has been a broadcast licensee for thirty-five years. The company, individually or through various subsidiaries, is the licensee of 7 AM and 8 FM stations in major markets throughout the country.<sup>1</sup> Combined, the Greater Media radio

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<sup>1</sup> These facilities include: KRLA(AM), Pasadena, California and KLSX(FM), Los Angeles, California; WBCS(FM), WMEX(AM), and WMJX(FM), Boston, Massachusetts; WWRC(AM) and WGAY(FM), Washington, DC; WCSX(FM), Birmingham, Michigan and WHND(AM), Monroe, Michigan; WPEN(AM) and WMGK(FM), Philadelphia, Pennsylvania; WCTC(AM) and WMGQ(FM), New Brunswick, New Jersey; and WGSM(AM), Huntington, New York and WMJC(FM), Smithtown, New York. Other Greater Media subsidiaries provide cable television service to various areas.

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properties employ well over 400 people fulltime. As a longtime licensee, Greater Media has had extensive experience in the formulation and implementation of effective EEO programs in a variety of markets in compliance with the Commission's EEO rules and reporting requirements. Greater Media has trained innumerable people to enter the broadcast industry and to advance to upper level positions. It operates a successful training program which has facilitated entry into media jobs for members of minority groups and women.

2. Greater Media fully supports the fundamental policy goals pursued by the Commission's EEO rules and policies. Non-discriminatory employment policies and practices are an integral part of licensees' public service obligations. By implementing productive EEO programs, licensees enhance access by minorities and women to increased employment opportunities and to greater participation in the management of broadcast facilities.

3. These increased opportunities may facilitate reaching the bedrock EEO goal of greater program diversity. In this regard, the requirement that licensees engage in affirmative efforts to recruit minorities and women is specifically predicated on the diversity of programming rationale upheld in Metro Broadcasting, Inc. v. FCC,<sup>2</sup> and more recently in Florida State Conference of Branches of the NAACP v. FCC.<sup>3</sup> Thus, there must be a reasonable nexus between the ultimate goal of advancing minority and female participation in programming and management and a

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<sup>2</sup> 497 U.S. 547, 554-555 (1990).

<sup>3</sup> No. 93-1162, slip. op. at 2 (D.C. Cir. May, 27, 1994).

specific regulation or requirement. However, a number of the proposals in the Notice appear to extend far beyond the programming nexus which provides the rationale for affirmative action obligations.

4. Reporting Requirements Generally. Greater Media generally opposes any proposal to increase the administrative burdens on licensees imposed by the Commission's EEO rules. The Commission's current EEO rules and policies demand the collection and maintenance of voluminous data related to the recruitment and hiring process. This process, which entails substantial costs, generates ample information on which to judge the sufficiency of a licensee's EEO efforts. Increased administrative burdens improperly elevate form over function and threaten to undermine licensees' good faith efforts to implement a results-oriented EEO program. Moreover, the ever-increasing cost of compliance and the administrative burden of demonstrating such compliance, coupled with the increasing severity of sanctions associated with violations, diverts resources that would be better spent ensuring that employment and development opportunities for women and minorities remain available. Instead, the Commission should focus its attention on the sufficiency of licensees' overall EEO efforts, and the ultimate results of those efforts in a less than perfect marketplace.

5. Part-time Reporting Requirements. The Commission seeks comment on how it should evaluate part-time employees and hires in its EEO analysis. In Greater Media's experience, those holding part-time positions rarely have any real input into and impact upon a station's programming and administration. Greater

Media therefore supports the elimination of part-time employee reporting requirements.

6. Licensees' submission of part-time employment information should be permissive. For the rare instances where part-time employees are effectively involved in programming or other major decisional matters, licensees can address the extent and sufficiency of minority and female participation in the self-analysis section of the EEO/affirmative action program. Moreover, part-time employees will be reflected to the extent that the pool of part-time employees serves as a recruitment pool for full-time openings at a station. Therefore, unless included in the discretionary information provided by the licensee, the Commission should disregard part-time employees in its EEO analysis.

7. Minority and Female-owned Businesses. Imposing administrative burdens upon, or otherwise regulating the business relationships of, FCC licensees likewise exceeds the permissible bounds of the Commission's broadcast EEO regulatory authority. While Greater Media is certainly supportive of minority- and female-owned businesses, the scope of the Commission's authority to regulate licensees' EEO activities is circumscribed by the programming nexus rationale. See, NAACP v. Federal Power Commission, 425 U.S. 662, 671 n. 7 (1976); Metro Broadcasting, Inc. v. FCC, 497 U.S. 547, 554-555; Florida NAACP v. FCC, No. 93-1162 (D.C. Cir. May, 27, 1994).

8. Moreover, Commission involvement in these business activities would be unwise as well. As a practical matter, Greater Media, like most other businesses, tends to conduct business with those entities that have proven themselves reliable

over the long-term, and that best suit its needs, prices, and conditions at any given time. Little, if any, societal good is advanced by artificially creating favored suppliers to the detriment of others. Indeed, by hampering the business activities of licensees, such artificial constraints work to the detriment of a robust marketplace predicated on competition, efficiency, and quality of service. Further, Greater Media respectfully suggests that, in this era of limited financial resources, the Commission has neither the means or the expertise to implement a program scrutinizing such business relationships. For all of these reasons, Greater Media strongly believes that it should be free to conduct its business with its chosen suppliers, so long as it complies with the existing laws prohibiting discrimination, and opposes any proposal to overlay the day-to-day business of radio broadcasting with further administrative requirements that do not serve the accepted goals underlying the Commission's EEO policies.

9. Adequacy of Existing Enforcement. In response to the brief invitation at Paragraph 24 of the Notice to comment on the need for changes in enforcement, Greater Media suggests that the Commission should test its tough new standards before considering implementing anything stricter. The Commission's recent Policy Statement<sup>4</sup> on EEO forfeiture standards gave licensees new benchmarks to meet in terms of the composition of a licensee's job applicant pools. Specifically, licensees found in violation of

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<sup>4</sup> Policy Statement re: Standards for Assessing Forfeitures for Violations for the Broadcast EEO Rules, FCC 94-27, released February 1, 1994.

the Commission's EEO rules are subject to upward adjustment for a failure to successfully recruit minority and female applicants for 33% and 66% of the position openings. From the industry's viewpoint, these benchmarks are substantially more rigorous than previous EEO analysis and, as implemented to date, pose the specter of heavy fines upon licensees. At the very least, there should be a trial period to determine their effectiveness before abruptly proposing any stricter standards.

10. Joint Recruitment Efforts. The Commission asks how it can encourage joint recruitment efforts by broadcasters, but does not articulate why joint efforts are a favored means of recruitment or what form such joint efforts might take. It is possible that such efforts could produce cost savings without compromising the effectiveness of licensees' EEO programs. Possibly, too, joint efforts could result in even better EEO programs. Greater Media encourages the Commission to leave to licensee discretion the issue of whether or not joint efforts would be economical and productive.

11. As a general matter, while Greater Media does not in any way support quotas, it believes that benchmark guidelines can provide reliable evidence that a license has implemented a satisfactory affirmative action program. Where a licensee meets these benchmarks, no further inquiry would be necessary or appropriate. Greater Media believes that the Commission's original "50-50" guidelines (for larger stations) provided a meaningful standard for broadcasters without discouraging them from exceeding the guidelines. Greater Media continues to believe that, in the absence of evidence of discrimination, a licensee which consist-

ently meets some benchmark over a period of time should presumptively be judged to have satisfied its EEO obligations and implemented an effective affirmative action program. The Commission, in any Notice of Proposed Rule Making resulting from this Inquiry, should propose the establishment of benchmarks. When licensees meet those benchmarks, investigation of the implementation of EEO programs is unnecessary.

12. Inquiry Letter Procedures. Greater Media recognizes that there may be a need for randomness in the Commission's inquiry procedures used at renewal time to evaluate the sufficiency of a licensee's overall EEO efforts. While a licensee's EEO efforts and record-keeping obligations apply throughout the license term, it would be excessive to require licensees to provide documentation with respect to an entire term. Greater Media suggests that if the Commission decides to implement a system of random time periods for inquiries, it should request licensee information with respect to any three consecutive years during the renewal term, instead of proposing review of the full seven-year term. Such an approach would be consistent with the Commission's expressed desire to avoid imposing additional administrative burdens upon licensees without compromising its ability to enforce its EEO rules and policies. A three-year period will provide ample information to determine whether or not a licensee has met its obligation and is consistent with the Commission's current practices as well. The selection of three years during the license term would nonetheless demand consistent and uniform record-keeping efforts throughout and thereby encourage licensees to maintain accurate records at all times.

13. Renewal Applications. The Commission seeks input as to whether the Form 396 should be modified to request more detailed recruitment and hiring information, such as that requested in the Bilingual inquiry. Greater Media opposes any revision that would impose additional administrative burdens on licensees. This requirement would not only make the renewal application process more onerous, but would, in the vast majority of instances, be unnecessary inasmuch as most license renewal applications (well over 90%) are granted without further inquiry based on numbers alone. Greater Media suggests that the Commission utilize a "numbers plus" analysis that would credit the results of a licensee's EEO efforts. For example, if the numbers or percentages of minority and female employees reflected in the renewal application approach parity with the applicable MSA, or else exceed it by some "plus" factor, then the Commission should not require any additional information.

14. Annual Employment Reports. Greater Media believes that the job categories reflected in the current Broadcast Station Annual Employment Form are fully adequate for the Commission's purposes. The form sets forth all categories needed to assess licensee's employment profiles in a meaningful manner. In any event, the statutory provision which mandates additional job categories for cable operators appears also to have been designed to reach television. There is no reason why the Commission should extend that treatment to radio .

15. Conclusion. Greater Media fully supports the Commission's effort to study the effectiveness and improve compliance and implementation of its EEO rules, and urges the Commission to



propose rules and policies consistent with the views expressed herein.

Respectfully submitted,

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June 13, 1994